

1 Pavel Pogodin (206441)
 2 Attorney at Law
 3 617 North Delaware Street
 4 San Mateo, California 94401
 Telephone: (650) 954-6857
 Fax: (650) 625-8110

5 Attorney for Plaintiff-Petitioner

ORIGINAL
 FILED
 07 JUL 19 AM 9:57
 RICHARD H. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 E-FILED

EDL

6
 7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA
 9 SAN FRANCISCO DIVISION

C 07 3537

10 PAVEL POGODIN,

Case No.

11 Plaintiff-Petitioner,

12 v.

13 DAVID STILL, District Director, U.S.
 14 Department of Homeland Security, Bureau of
 Citizenship and Immigration Services, San
 Francisco District; EMILIO T. GONZALEZ,
 Director, U.S. Department of Homeland
 Security, Bureau of Citizenship and
 Immigration Services; MICHAEL
 15 CHERTOFF, U.S. Secretary of Homeland
 Security; ROBERT S. MUELLER III,
 Director of the Federal Bureau of
 Investigation; ALBERTO GONZALES,
 Attorney General of the United States,
 Defendants-Respondents.

16
 17 Defendants-Respondents.

PETITION FOR NATURALIZATION
 HEARING UNDER 8 USC § 1447(B)
 (STALLED NATURALIZATION
 APPLICATION) AND APPLICATION
 FOR ISSUANCE OF ORDER TO
 SHOW CAUSE

22
 23 PARTIES

24 1. Petitioner is a long time United States permanent resident and a native of Russia who
 25 lawfully lived in the United States since his arrival as a graduate student in 1994.
 26 Petitioner holds two Master of Science Degrees in physics, a Doctorate Degree in
 27 physics and a Juris Doctor (J.D.) degree.

28

2. Petitioner is an attorney and a member of the State Bar of California and Bar of United States Patent and Trademark Office. Petitioner is employed as a partner in a law firm Sughrue Mion, PLLC in Mountain View, California. Petitioner files this petition for naturalization under 8 U.S.C. § 1447(b).
3. Petitioner resides in San Mateo, California.
4. Petitioner was born on August 4, 1971, in Dubna, Moscow Region, Russia. Petitioner's CIS A# is 073-426-966.
5. Respondent David Still is the District Director for the San Francisco District of the Bureau of Citizenship and Immigration Services ("CIS"), U.S. Department of Homeland Security. Mr. Still is responsible for applications for naturalization pending in the San Francisco District. Mr. Still is sued in his official capacity.
6. Respondent Emilio T. Gonzalez is the Director of CIS. Mr. Gonzalez is responsible for the processing and determination of all applications for naturalization submitted to CIS. He is sued in his official capacity.
7. Respondent Michael Chertoff is the U.S. Secretary of Homeland Security, which encompasses CIS. Mr. Chertoff is ultimately responsible for the administration of all immigration and naturalization laws, including the processing and determination of applications for naturalization. He is sued in his official capacity.
8. Respondent Robert S. Mueller III is the Director of the Federal Bureau of Investigation. Mr. Mueller is ultimately responsible for the processing of "name checks" submitted by CIS to the FBI during the naturalization process. Mr. Mueller is sued in his official capacity.
9. Respondent Alberto Gonzales is the Attorney General of the United States. He is the head of the U.S. Department of Justice, which encompasses the FBI. Mr. Gonzales

1 also jointly responsible with Mr. Chertoff for enforcement of immigration laws. Mr.
 2 Gonzales is sued in his official capacity.

3 **JURISDICTION AND VENUE**

4 10. This Court has subject matter jurisdiction over this matter pursuant to 8 U.S.C. §
 5 1447(b) (district court jurisdiction to adjudicate delayed naturalization applications),
 6 and 28 U.S.C. §§ 1331 (federal question).

7 11. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §§
 8 1391(e). Petitioner sues the Respondents in their official capacities as officers and
 9 employees of the United States. A substantial portion of the events giving rise to this
 10 Complaint occurred within this District, where the Petitioner's applications for
 11 naturalization are pending before the San Francisco District of the CIS. In addition,
 12 venue is proper in this District pursuant to 8 U.S.C. § 1447(b), which provides that a
 13 petition for de novo review of a naturalization application shall be filed in the district
 14 in which the applicant resides. Petitioner resides within this District.

15 **FACTS**

16 12. Petitioner has become lawful permanent resident of the United States on or about
 17 April 23, 2001.

18 13. On or about February 1, 2006, Petitioner filed an application for naturalization with
 19 CIS.

20 14. On or about November 9, 2006, Petitioner successfully passed a naturalization
 21 examination held at San Francisco District Office of CIS.

22 15. Petitioner meets all of the statutory requirements for naturalization. At the end of his
 23 interview, Petitioner was informed that he passed the tests on English and U.S. history
 24 and government, but that a decision could not be made on his application because

25
 26
 27
 28

1 background checks have not been completed.

2 16. After approximately three months after successfully passing his naturalization
3 examination, Petitioner contacted CIS to inquire about the status of his naturalization
4 application. Petitioner was told that his application was pending for the completion of
5 all necessary background checks.

6 17. CIS employee contacted by Petitioner as alleged in paragraph 16 has refused to
7 specify a time frame when Petitioner's background checks may be completed.

8 18. After approximately one month after successfully passing his naturalization
9 examination, Petitioner contacted staff of Hon. Tom Lantos, member of U.S. House of
10 Representatives from California. Pursuant to Petitioner's request, staff of Hon. Tom
11 Lantos has sent a letter to the FBI in or about December 2006, inquiring about the
12 status of Petitioner's background checks.

13 19. FBI has failed to respond to the inquiry regarding the status of Petitioner's background
14 checks from a member of U.S. House of Representatives as alleged in paragraph 18.

15 20. In or about March 2007, Petitioner contacted staff of Hon. Dianne Feinstein, member
16 of U.S. Senate from California. Pursuant to Petitioner's request, staff of Hon. Dianne
17 Feinstein has sent a letter to the FBI in or about March 2007, again inquiring about the
18 status of Petitioner's background checks.

19 21. FBI has failed to respond to the inquiry regarding the status of Petitioner's background
20 checks from a member of U.S. Senate as alleged in paragraph 20.

21 22. Respondents have failed to adjudicate Petitioner's naturalization application within
22 120 days after the date of his naturalization examination alleged in paragraph 14.

23 23. Respondents continue to fail to complete Petitioner's background checks and
24 adjudicate Petitioner's naturalization application.

24. Petitioner has successfully passed numerous previous background investigations, including extensive investigation of Petitioner's background and moral character upon Petitioner's admission to the State Bar of California.
25. Petitioner has successfully passed a background check in 2005, administered by California Department of Justice, upon Petitioner's obtaining of a real estate license in California in or about October 2005.

FIRST CAUSE OF ACTION
RIGHT TO DE NOVO JUDICIAL DETERMINATION OF APPLICATION FOR
NATURALIZATION UNDER 8 U.S.C. § 1447(B)

1 paragraph 14, in violation of 8 C.F.R. § 335.3.

2 32. All criminal background checks, including name checks, must be completed before the
3 date of the examination. 8 C.F.R. § 335.2(b). Therefore, any delay in completion of
4 criminal background checks, including name check, is not a good cause for
5 Respondents' failure to adjudicate Petitioner's naturalization application.

6 33. Section 8 C.F.R. § 335.2(b) refers to background checks and "examination" as
7 separate and distinct events and states that all background checks must be completed
8 before "examination."

9 34. Section 8 C.F.R. § 335.2(b) clearly indicates that according to government's own
10 interpretation of the law, all the background checks and investigations, including the
11 name check, are separate and distinct from the "examination" within the meaning of 8
12 C.F.R. § 335.3 and 8 U.S.C. § 1447(b).

13 35. Because Respondents have failed to adjudicate Petitioner's naturalization application
14 within 120 days after the date of his naturalization examination, as alleged in
15 paragraph 14, Petitioner is entitled to de novo adjudication of his naturalization
16 application by this Court under 8 U.S.C. § 1447(b).

17 36. This Court should grant Petitioner's naturalization application pursuant to 8 U.S.C. §
18 1447(b), because Petitioner meets all of the requirements for naturalization under
19 chapter 2 of the Immigration and Nationality Act, 8 U.S.C. § 1421 et seq., and,
20 therefore, has a right to become a naturalized citizen of the United States.

21 37. Petitioner has suffered and continues to suffer grave prejudice and irreparable harm
22 from the delay of his naturalization. He has been deprived of the substantial and
23 unique rights and duties of U.S. citizenship, including protection of the laws of the
24 United States equal to that of citizens, political rights including the right to vote, the
25
26
27
28

right to enter and remain in the United States, freedom of movement and travel, the right to obtain a U.S. passport, the protection of the U.S. government when outside of the United states, and the right to receive certain governmental and non-governmental benefits, such as tuition assistance and scholarships. Petitioner has been subject to fear, despair and uncertainty engendered by the inability to obtain citizenship, including the inability to travel and to carry out necessary activities out of concern that he will miss a swear-in ceremony, and inability to file visa petitions for immediate relatives as a United States citizen.

APPLICATION FOR ORDER TO SHOW CAUSE

38. The allegations of paragraphs 1 through 37 above are repeated and incorporated as though fully set forth herein.
39. The harm suffered by Petitioner as alleged in paragraph 37 constitutes irreparable harm.
40. Petitioner continues to suffer such irreparable harm due to Respondent's continued failure to adjudicate Petitioner's naturalization application as required by the law and regulation.
41. Normal delays associated with bringing this case to trial will further exacerbate the irreparable harm already suffered by Petitioner.
42. Petitioner fulfilled all statutory requirements for naturalization and, therefore, is entitled to naturalization as a matter of statutory right.
43. Thus, interests of justice require an Order to Show Cause to be issued as respectfully requested in paragraph 44(b) below.

PRAYER FOR RELIEF

44. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff Petitioner prays the Honorable Court for the following relief:

- a. Assume and maintain continuing jurisdiction over the matter;
- b. Issue an Order to Show Cause requiring Respondents to show a case why Petitioner should not be naturalized as a citizen of the United States by the Honorable Court or why Petitioner's naturalization application should not be remanded to Respondents with instructions to adjudicate it within 30 days.
- c. Review de novo and grant Petitioner's application for naturalization, pursuant to 8 U.S.C. § 1447(b) and administer the oath of allegiance to Petitioner.
- d. Issue a preliminary and permanent injunction pursuant to 28 U.S.C. §1361 and 5 U.S.C. §706(1), compelling Respondents to adjudicate Petitioner's application for naturalization within 30 days.
- e. Issue a writ in the nature of mandamus pursuant to 28 U.S.C. §1361 and 5 U.S.C. §706(1), compelling Respondents to adjudicate Petitioner's application for naturalization within 30 days.
- f. Remand the Petitioner's naturalization application to Respondents with instructions to adjudicate it within 30 days.
- g. Award Petitioner the costs of the suit; and
- h. Grant any and all further relief this Court deems just and proper.

11

11

11

11

1 Dated: July 9, 2007

Respectfully Submitted,

2 /s/ Pavel Pogodin

3 Pavel Pogodin (206441)
4 Attorney at Law
5 617 North Delaware Street
6 San Mateo, California 94401
Telephone: (650) 954-6857
ppogodin@gmail.com

7 Attorney for Plaintiff-Petitioner

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28